IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 259 OF 2006.

Manohar Ganmgaram Kalubarme. ... Appellant.
Versus.
The Collector, Solapur and others. ... Respondents.

Ms.Nayana Thatte i/by Shri S.M.Oak for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 3rd April, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellant. The suit filed by the Appellant/Plaintiff has been decreed in part by the trial Court and the Appeal preferred by the Appellant in the District Court has been dismissed.

2. A perusal of the prayers made in the plaint shows that prayer (a) is for setting aside the Award made on account of acquisition of suit land allegedly owned by the Appellant. Prayer (b) is for deleting certain area from the Award made in respect of the acquired land. Vide prayer clause (c) the Plaintiff prayed that the entire compensation in respect of the suit land bearing Survey No.419 should be ordered to be paid to him. The case made out in the plaint is that in the Award a sum of Rs.39,009.60 was awarded in respect of the land bearing Survey No.419 which was made payable to the original Defendant No.4. The trial Court has

granted relief in favour of the Appellant in this regard by a partial decree directing the State of Maharashtra to pay the entire compensation payable in respect of land bearing Survey No.490 (Gat No.1348) to the Appellant. The said part of the decree is not disturbed by the Appellate Court.

3. The other two prayers which are made in the suit are for challenging the acquisition proceedings. In view of the settled position of law, the challenge to the acquisition proceedings could not have been entertained in a civil suit. So far as prayer (d) is concerned, the prayer is that in respect of land bearing Survey No.490 Gat No.1348, it may be declared that the Appellant/Plaintiff is entitled to file a reference under section 18 of the Land Acquisition Act, 1894. In view of the decree passed by the trial Court and in view of the provisions of law, such a declaration is not necessary. If section 18 of the said Act of 1894 is applicable to the acquisition in question, the Appellant can always apply under section 18 of the said Act of 1894 provided he applies within stipulated period of limitation.

4. There is no merit in the Second Appeal. Subject to what is stated above, the Second Appeal is dismissed. No order as to costs.

Judge.